

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD EUGENE STARKS, JR.,

Defendant-Appellant.

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UNPUBLISHED  
September 5, 1997

No. 167554  
Presque Isle Circuit Court  
LC Nos. 92-001321-FH;  
92-001378-FH

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Defendant pleaded guilty to possession with intent to deliver 50 grams or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and possession with intent to deliver marijuana (two counts), MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c). Defendant was sentenced to ten to thirty years' imprisonment on the cocaine conviction and to no prison time on the marijuana convictions. The sentence for the cocaine conviction was later modified to ten to twenty years' imprisonment. Defendant appeals as of right. We affirm in part and reverse in part.

Defendant first argues that his convictions should be reversed because his prosecution was the result of entrapment. We disagree. Although one of the confidential informants in this case was a long time friend of defendant, there was no evidence presented at the many entrapment hearings that there was any appeal to that friendship or appeals to sympathy in order to purchase drugs from defendant. *People v Juillet*, 439 Mich 34, 56; 475 NW2d 786 (1991). Defendant also failed to prove by a preponderance of the evidence that there was any reprehensible conduct by the police. *People v Moore*, 180 Mich App 301, 309; 446 NW2d 834 (1989); *People v Fabiano*, 192 Mich App 523, 526; 482 NW2d 467 (1992). The more serious problem with defendant's argument is that it refers to actions of the police in connection with the controlled buys by the confidential informants. Defendant was not charged with those buys. Instead, the buys were used as a basis for a search warrant to search defendant's house where more than fifty grams of cocaine and several pounds of marijuana were found. Defendant was charged and convicted on the basis of the substances found during the search. Even reprehensible conduct by the police, which we do not consider this conduct to be, will not support a finding of entrapment unless it induced or

instigated the crime at issue. *People v Crawford*, 143 Mich App 348, 353; 372 NW2d 550 (1985). The trial court did not clearly err in finding that defendant had not been entrapped. *People v D'Angelo*, 401 Mich 167, 183; 257 NW2d 655 (1977).

Defendant next argues that the trial court abused its discretion in denying his motion for plea withdrawal without conducting a hearing. The trial court did not abuse its discretion. *People v Holmes*, 181 Mich App 488, 496; 449 NW2d 917 (1989). Defendant has presented no authority for his proposition that the trial court must hold a hearing. Further, defendant has failed to sustain his burden of establishing that withdrawal of the plea is supported by reasons based upon the interest of justice. *People v Jackson*, 203 Mich App 607, 611-612; 513 NW2d 206 (1994).

Although defendant's counsel incorrectly stated the effect of the habitual offender charge on the minimum sentence, counsel actually minimized rather than maximized the ramifications of conviction after trial because he did not make note of the consecutive sentencing provisions of MCL 333.7401(3); MSA 14.15(7401)(3). In addition, defendant is not in the same position as the defendant in his cited case of *People v Spencer*, 192 Mich App 146; 480 NW2d 308 (1991). Defendant's argument that he should be allowed to withdraw his plea because he believed that his maximum sentence would not exceed ten years is not supported by the record. Defendant argues that he was "compelled" to plead guilty. However, the record demonstrates that his only compulsion was that faced by all defendants who plead guilty, i.e. to secure the benefit of the plea bargain. Defendant argues that his plea was involuntary because of prosecutorial misconduct. However, that misconduct occurred over a year and a half before the plea was finalized and put on the record. Finally, defendant argues that he should be allowed to withdraw his plea because he claims innocence. Defendant has failed to provide any support for this allegation.

Defendant's next claim of error arises out of the trial court's failure to ensure a proper waiver of counsel before allowing defendant to represent himself. Reversal is not required. Although defendant would not agree to allow his latest attorney to actively represent him at two of the five entrapment hearings, the record demonstrates that he was represented at the remainder of the hearings and at his plea and sentence hearings. Therefore, because defendant was represented by counsel at his plea and sentence hearings and most other hearings, the trial court's failure to warn him about the dangers of self-representation does not require reversal.

Defendant next argues that the trial court erred in refusing to enforce the original plea bargain that he made with the prosecutor. The only plea bargain actually accepted by defendant was the one placed on the record at the plea hearing. That bargain was fulfilled except, as conceded by the prosecutor on appeal, a conviction should not have resulted from the marijuana charge in LC No. 92-001321-FH. In all other respects, the plea agreement was fulfilled. Unlike *People v Lombardo*, 216 Mich App 500, 510-512; 549 NW2d 596 (1996), there was no previous written agreement that the prosecutor attempted to vacate. After a hearing on the disagreement between defendant and plaintiff regarding the scope of the plea bargain negotiated at the time of the search of defendant's home, the trial court found that the prosecutor's negotiated plea was the same as the one eventually entered in this case. The trial court did not err. *Id.* at 511. Hence, except for vacating the conviction for the

marijuana charge in LC No. 92-001321-FH, we uphold the plea agreement as determined by the trial court.

Defendant claims that he was denied the effective assistance of counsel when one of his trial attorneys failed to enter into evidence the note of another trial counsel regarding the plea bargain. We disagree. Defendant has failed to rebut the strong presumption that trial counsel's action was sound trial strategy. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

Defendant raises several claims of prosecutorial misconduct. However, inasmuch as there was no trial in this matter, defendant could not have been denied a fair and impartial trial as a result of any of the prosecutor's actions. *People v Vaughn*, 186 Mich App 376, 385; 465 NW2d 365 (1990).

Finally, defendant argues that the trial court erred in not disqualifying itself and in not ordering a de novo review of its decision. The trial court did not abuse its discretion in denying defendant's motion for disqualification. *Cain v Dep't of Corrections*, 451 Mich 470, 503; 548 NW2d 210 (1996). Defendant has provided absolutely no evidence of personal and extrajudicial bias or prejudice on the part of the trial court. *Id.* at 495.

Defendant's marijuana conviction in LC No. 92-001321-FH is vacated; defendant's remaining convictions and sentence are affirmed.

/s/ Hilda R. Gage

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald